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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

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October 13, 2010

The Honorable Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Small Business Contracting Program Parity

Dear Secretary Genachowski,

As you may know, on September 27, 2010, President Obama signed the *Small Business Jobs Act of 2010* (P.L. 111-240) into law. This historic legislation provides our nation's 29 million small businesses with much needed support and incentives to help them grow and create jobs. In particular, the *legislation* extends nearly \$12 billion in tax cuts, creates a \$30 billion Small Business Lending Fund that utilizes healthy community banks as a conduit to increase lending to small businesses, and strengthens the Small Business Administration's (SBA) core counseling, exporting, and lending programs. Further, this legislation includes a number of critical improvements to the Federal Government's small business contracting and procurement programs, including the establishment of parity amongst small business set aside programs.

Specifically, section 1347 of the legislation both reiterates and clarifies Congressional intent that Federal small business set-aside programs— including the 8(a), Historically Underutilized Business Zone (HUBZone), Service Disabled Veteran-owned small business (SDVOSB), and the newly implemented Women-owned small business (WOSB) programs— should be placed on equal footing, with no one program receiving priority over another. Currently, existing statute allows contracting officers' discretion when choosing to award a federal contract to a small business participating in these programs. However, misinterpretation of Congressional intent by the courts as well as recent decisions by the Government Accountability Office (GAO) have forced contracting officers to give priority to small businesses participating in the HUBZone program when awarding federal contracts. These decisions have had a negative and detrimental effect on the ability of small businesses participating in other contracting set-aside programs to effectively compete for and win federal contracts.

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To ensure that all small businesses—regardless of the particular set-aside program they are participating in—receive a fair shot at winning federal contracts, it is imperative that your agency closely follow and enforce SBA's parity policy and regulations within your own contracting programs. That is, before setting aside a contract for small business, federal contracting officers may choose with discretion among SBA's procurement and business development programs, without giving one program preference over another.

I hope that your agency begins implementing the provisions of the legislation, especially the Small Business Contracting Parity provision, according to Congressional intent. If you have any questions regarding the legislation and specifically, Section 1347, please feel free to contact Krystal Brumfield or John High on my staff at (202) 224- 5175.

With warmest regards, I am

Sincerely,

A handwritten signature in blue ink, reading "Mary L. Landrieu". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mary L. Landrieu
Chair



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

November 23, 2010

OFFICE OF
THE CHAIRMAN

The Honorable Mary L. Landrieu
Chairwoman
Committee on Small Business and Entrepreneurship
United States Senate
428A Russell Senate Office Building
Washington, D.C. 20510-6350

Dear Chairwoman Landrieu:

Thank you for your letter concerning the *Small Business Jobs Act of 2010* (P.L. 111-240). I have shared your letter with the Commission's Chief of Contracts, as well as with the Office of General Counsel to ensure that the Commission is current on these new provisions.

I greatly appreciate the notice about the new small business contracting parity provisions contained in the Act, and thank you for your leadership on these issues. As the Commission looks for opportunities to contract with small businesses to meet the agencies' needs for goods and services, we will be sure to factor in these parity provisions and keep in mind the Congressional intent behind the legislation.

Thank you again for this information. Please let me know if you would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read "Julius Genachowski", is written over a horizontal line.

Julius Genachowski